

Express Mail No.: EL 500 578 375 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Marton et. al.

Confirmation No.: 8604

Serial No.: 09/823,322

Art Unit: 1631

Filed: April 2, 2001

Examiner: Marschel, A.

For: METHODS FOR DETERMINING
THERAPEUTIC INDEX FROM
GENE EXPRESSION PROFILES

Attorney Docket No: 9301-136

RECEIVED
FEB 06 2003
TECH CENTER 1600/2900

#7
Plunkett
2/9/03

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action mailed December 12, 2002 in connection with the above-identified patent application, please consider the following remarks. Applicants submit herewith: a Petition for Extension of Time for a period of one month from January 12, 2003 up to and including February 12, 2003, accompanied by the appropriate fee.

REMARKS

In the Office Action mailed December 12, 2002, the Examiner has required a restriction to one of the following two groups:

- Group I: Claims 1-22 and 64-70, drawn to methods for evaluating specificity of a drug, classified in class 702, subclass 19; and
- Group II: Claims 23-44, drawn to methods for determining therapeutic index of a drug, classified in class 514, subclass 2.

The Examiner contends that the inventions of Groups I-II are distinct, each from the other. In order to be fully responsive to the Examiner's requirement for a restriction of the

instant application, Applicants hereby provisionally elect with traverse to prosecute Group I, claims 1-22 and 64-70, drawn to methods for evaluating specificity of a drug, classified in class 702, subclass 19.

If either Group I or Group II is elected, the Examiner has also required an election of one of the following species for prosecution on the merits:

Specie A: The biological sample under evaluation has been modified in that a critical gene in a target pathway has been deleted or made nonfunctional.

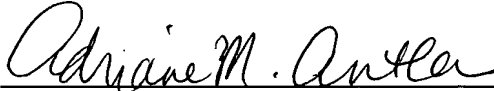
Specie B: The biological sample under evaluation has not been modified regarding either the deletion or making nonfunctional of a critical gene in a target pathway.

Applicants hereby provisionally elect with traverse species A: the biological sample under evaluation has been modified in that a critical gene in a target pathway has been deleted or made nonfunctional. Claims 1, 8-12, 19-22 and 64-70 are believed to be readable upon species A.

Entry and consideration of the above remarks are respectfully requested.

Respectfully submitted,

Date: February 3, 2003

 32,605
Adriane M. Antler (Reg. No.)
PENNIE & EDMONDS LLP
1155 Avenue of the Americas
New York, New York 10036-2711
(212) 790-9090